

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

ROBERT BLAKE,

Plaintiff,

v.

Case No. 2:11-cv-00379

MOUNT OLIVE CORRECTIONAL COMPLEX,
DEPUTY WARDEN MARVIN PLUMLEY,
CAPTAIN STEVE CAUDILL,
LARRY PROPST, Business Manager, and
DAVID BALLARD, Warden,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

In an Order entered June 23, 2011 (ECF No. 5), the undersigned set forth the plaintiff's litigation history and found that while he was incarcerated or detained, the plaintiff had filed at least three actions in a court of the United States which were dismissed as frivolous, malicious or for failure to state a claim. The undersigned also found that this case does not allege any facts which indicate that the plaintiff is under imminent danger of serious physical injury. The same is true as to the plaintiff's amended complaint (ECF No. 9), which complains that the prison is charging inmates \$3.00 per month for cable. One month after the plaintiff filed his complaint, he filed an Application to Proceed without Prepayment of Fees and Costs (ECF No. 7). T h e undersigned proposes that the presiding District Judge adopt the

findings in the Order entered June 23, 2011, and find that the plaintiff has forfeited his ability to pay the \$350 filing fee in installments in this case. It is respectfully **RECOMMENDED** that the Application to Proceed without Prepayment of Fees and Costs be denied and that this case be dismissed without prejudice.

The plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the plaintiff shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to Judge Johnston.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the plaintiff.

August 17, 2011
Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge